

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of the preliminary hearing held before Judge Palmer on March 9, 1994, and the exhibits attached thereto, along with the discovery deposition of claimant taken by respondent on March 7, 1994.

### ISSUES

The Administrative Law Judge held that claimant was entitled to seventy-two (72) weeks of education under a vocational rehabilitation plan and that highly unusual circumstances exist. The respondent and insurance carrier appeal the judge's order and contend that he has erred in granting these benefits. The respondent and insurance carrier contend that claimant is not entitled to vocational rehabilitation, that no unusual circumstances exist and that the Administrative Law Judge lacks authority to approve a plan seventy two (72) weeks in duration.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board does not have jurisdiction to review this matter and, therefore, the order of Administrative Law Judge Floyd V. Palmer dated March 24, 1994 remains in full force and effect.

The jurisdiction and authority of the Appeals Board to review preliminary matters is governed by K.S.A. 44-534a and K.S.A. 44-551.

Any finding with regard to disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional and subject to review by the Board. See K.S.A. 44-534(a)(2). As none of the enumerated issues apply in this proceeding, the Appeals Board does not have jurisdiction to review this matter pursuant to K.S.A. 44-534a.

A party may apply for review by the Appeals Board pursuant to K.S.A. 44-551 when the Administrative Law Judge has exceeded his jurisdiction and authority in granting or denying the relief requested at preliminary hearing. See K.S.A. 44-551(a)(2)(A). Claimant's right to vocational rehabilitation benefits is governed by K.S.A. 1992 Supp. 44-510g which specifically provides that the Administrative Law Judge may grant vocational rehabilitation for a period of thirty six (36) weeks and, in extremely unusual cases, after hearing and presentation of evidence, may extend the period for an additional 36 weeks. See K.S.A. 1992 Supp. 44-510e(e)(3). As the Administrative Law Judge has not exceeded his authority pertaining to the preliminary award of vocational rehabilitation benefits, the Appeals Board does not have jurisdiction to review this matter under K.S.A. 44-551.

The respondent contends the case of Clintzman v. St. Joseph Hospital of Concordia, 11 Kan. App.2d 199, 717 P.2d 1074(1986) is authority that the Appeals Board has jurisdiction to review this matter. The Appeals Board does not agree. The Clintzman decision is not controlling as it pertains to the review of a final award rather than a preliminary matter such as is now before us.

### ORDER

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the order of Administrative Law Judge Floyd V. Palmer dated March 24, 1994, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc: John M. Ostrowski, Attorney for Claimant, PO Box 1453, Topeka, KS 66601-1453  
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Floyd V. Palmer, Administrative Law Judge  
George Gomez, Director